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Midfirst Bank
Midland Mortgage Company*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

In re the Matter of:	)	Case No.: CV-09-01853-PHX-FJM
Martha Rodrigues , a single woman,)	
)	
Plaintiff)	
	)	DEFENDANTS MIDFIRST BANK AND
vs.,	)	MIDLAND MORTGAGE COMPANY'S
	)	REPLY IN SUPPORT OF MOTION FOR
QUALITY LOAN SERVICE CORP. a	)	SUMMARY JUDGMENT OR, IN THE
California corporation licensed to do business	)	ALTERNATIVE, MOTION FOR
in the State of Arizona, Midfirst BANK , a	)	SUMMARY JUDGMENT RE: COUNT I.
nationally chartered bank, and their subsidiary)	
MIDLAND MORTGAGE COMPANY , an	)	(Assigned to the Honorable
Oklahoma Corporation to do business in the	)	Frederick J. Martone)
State of Arizona, WELLS FARGO BANK ,)	
N.A. , a nationally banking association	)	(Oral Argument Requested)
licensed to do business in the State of Arizona.)	
TRES AMIGOS PROPERTIES, LLC , an)	
Arizona limited liability company, XYZ)	
CORPORATION 1-10, JOHN and JANE)	
DOES 1-10, BLACK PARTNERSHIPS 1-10)	
)	
Defendants.)	

Defendant, Midfirst Bank (“Midfirst”) and Midland Mortgage Company (“Midland), by and through their counsel undersigned, submit this Reply in Support of their Motion for Summary

1 Judgment RE: Count I. Plaintiff has not shown that there is any genuine issue as to any material
2 fact. Accordingly, Defendants' Motion should be granted.

3 The essence of Plaintiff's argument is that Thaddeus Burr, Midfirst's Vice President, who
4 signed the Declaration, "has not testified that he visually verified the ownership of the Note."
5 (Response, p. 4.) While that statement, by and of itself, may be true, Mr. Burr stated that on
6 February 25, 2009, the date the Trustee noticed the trustee sale and on June 30, 2009, the date of the
7 Trustee Sale, Midfirst was the owner and holder of the Note and that it was held for safekeeping at
8 Midfirst's Custodial Facility at 2730 North Portland in Oklahoma City, Oklahoma. It is no surprise
9 that Mr. Burr has not visually seen the Note, since the Note is one of thousands held at Midfirst
10 Custodial Facility. Even Plaintiff concedes on this issue, stated: "If the Note in question has been
11 found and indentified [sic], Movants' need only demonstrate their possession of the Note to be
12 dismissed by Plaintiff." (Response, p. 3.) That is precisely what Defendants have shown, through
13 Mr. Burr's Declaration.

14 Plaintiff has not shown that there is any genuine issue of material fact. Plaintiff has not filed
15 a proper Rule 56(f) Affidavit, which requires that a party state specified reasons why it cannot
16 present facts essential to justify the opposition. The response simply says that Plaintiff "has filed or
17 will file a Motion to Produce the Note in Question. (Response, p. 3.) However, no Rule 56 Affidavit
18 or Request for Production has been filed or propounded, respectfully.

19 Count I of Plaintiff's Complaint alleges "Lack of Standing by Midland." Midland has
20 established that it had "standing" and the right to conduct the trustee's sale. Plaintiff has not
21 controverted any facts established by Defendants. No genuine issues of material fact exists and
22 Defendants Motion for Summary Judgment Re Count I should be granted. In addition, Defendants
23 are entitled to an award of attorneys' fees pursuant to A.R.S. § 12-341.01.
24

1 RESPECTFULLY submitted this 31st day of August, 2010.

2 **MCCARTHY ♦ HOLTHUS ♦ LEVINE**

3
4 /s/Paul M. Levine

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9 **ORIGINAL** e-filed with the
10 Clerk of United States District
Court this 31st day of August, 2010

11 COPY sent via email this 31st day of
12 August, 2001 to the following:

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18 By /s/Joan B. Pyles